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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/064,146      | 06/14/2002  | Mark A. Kappel       | 126063              | 3242             |

27256 7590 01/04/2007

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EXAMINER

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

DATE MAILED: 01/04/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

|  |                                      |                                      |  |
|--|--------------------------------------|--------------------------------------|--|
| <b>Notification of Non-Compliant Appeal Brief<br/>(37 CFR 41.37)</b> | <b>Application No.</b><br>10/064,146 | <b>Applicant(s)</b><br>KAPPEL ET AL. |  |
|  | <b>Examiner</b><br>Tim Phan          | <b>Art Unit</b><br>3729              |  |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 10 October 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.  
**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):  
  
\_\_\_\_\_

### **DEFECTIVE APPEAL BRIEF**

1. The Brief submitted by Applicants on 10/10/06 is defective under 37 CFR 41.37 for at least the following reasons:

- The brief does not contain a status of the Amendment filed after Final, as required by 37 CFR 41.37(c)(1)(iv) although the present Appeal Brief claims to include the amendment to dependent Claims 9 and 13 (Page 2, Section IV);
- The brief does not contain a proper appendix of all the claims, e.g., rejected, allowed or confirmed, withdrawn, objected to, new, amended or canceled, as required by 37 CFR 41.37(c)(1)(viii) although the present Appeal Brief claims to rewrite the dependent Claims 9 and 13 into independent form (Page 2, Section IV).

Appellants' counsel would be advised to carefully review the provisions of 37 CFR 41.37 before submitting an amended Appellants' Brief.

Appellants are required to comply with provisions of 37 CFR 41.37(c). To avoid dismissal of the appeal, Appellant must comply with the provisions of 37 CFR 41.37(c) within ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication. Extensions of time may be granted under 37 CFR 1.136.

2. Any inquiry concerning this communication or earlier communications from the

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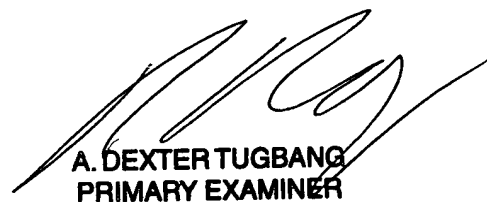
examiner should be directed to Tim Phan whose telephone number is 571-272-4568. The examiner can normally be reached on M & Tu, 6AM - 2PM, and W & Th, 9AM – 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 571-272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tim Phan  
Examiner  
Art Unit 3729

tp  
December 26, 2006



A. DEXTER TUGBANG  
PRIMARY EXAMINER